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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN S. GREESON and ERIC H. BONEWITZ

Appeal 2009-007485
Application 10/659,840
Technology Center 1600

Decided: March 30, 2010

Before RICHARD M. LEBOVITZ, MELANIE L. McCOLLUM, and JEFFREY N. FREDMAN, *Administrative Patent Judges.*

McCOLLUM, *Administrative Patent Judge.*

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to a pest protection mixture and method. The Examiner has rejected the claims as anticipated, obvious, and/or lacking adequate written description. We have jurisdiction under 35 U.S.C. § 6(b). We affirm-in-part.

STATEMENT OF THE CASE

Claims 1, 2, 4-14, and 16-21 are pending and on appeal (App. Br. 3). We will focus on claims 1, 2, 9, 11, and 12, which read as follows:

1. A mixture for application on an animal, to provide barrier protection against pests, comprising:

a carrier or combination of carriers that includes an oil-based carrier and that at least after application has an absolute or resultant viscosity of from 100 to 1200 S.U.S.; and

at least one pesticide with said carrier or combination of carriers, wherein said pesticide is adapted to act non-systemically relative to a host animal.

2. A mixture according to claim 1, wherein said mixture contains essentially no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension.

9. A mixture according to claim 1, wherein said viscosity is greater than 120 S.U.S.

11. A mixture according to claim 1, which further includes a volatile compound that is soluble in or miscible with said carrier or combination of carriers, wherein upon application to an animal said volatile compound evaporates to such an extent that said absolute or resultant viscosity is obtained.

12. A method of protecting an animal against pests, said method including the steps of:

providing a carrier, or combination of carriers, that includes an oil-based carrier and that at least after an application has an absolute or resultant viscosity of from 100 to 1200 S.U.S.;

mixing at least one of a non-systemically operating insecticide, ectoparasitide, viricide, insect or other arthropod growth regulator (IGR), bacteriacide, and bacteriostatic compound with said carrier to provide a mixture; and

applying said mixture to an animal.

Claims 1, 2, 4-14, and 16-21 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement (Ans. 2).

Claims 1, 2, 4, 5, and 9 stand rejected under 35 U.S.C. § 102(b) as anticipated by Waldstein[1] (Ans. 3).

Claims 1, 2, 4, 5, 7, and 8 stand rejected under 35 U.S.C. § 102(b) or § 103(a) as anticipated by or obvious over Mallis[2] (Ans. 3).

Claims 1, 2, 5, 7-9, and 11 stand rejected under 35 U.S.C. § 102(b) or § 103(a) as anticipated by or obvious over Coffee[3] as explained by Velcon[4] (Ans. 3).

I

The Examiner rejects claims 1, 2, 4-14, and 16-21 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement (Ans. 4). The Examiner argues that "[t]here is no description in the specification for support for claimed non-systemic effects resulting from either utilizing a pesticide ADAPTED TO ACT NON-SYSTEMICALLY (claim 1) or utilizing a NON-SYSTEMICALLY OPERATING PESTICIDE (claim 12)" (*id.* at 5). In particular, the Examiner argues that "[t]here is no written description . . . of any form of adaptation of any pesticide" (*id.* at 6).

Appellants argue that the Specification provides adequate support for these claim recitations (App. Br. 8-9; Reply Br. 1-3).

Issues

Has the Examiner shown that the Specification fails to provide written description adequate to support: (a) the recitation in claim 1 of a pesticide

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[1] Waldstein, US 4,176,076, Nov. 27, 1979.
[2] Mallis et al., US 2,988,473, Jun. 13, 1961.
[3] Coffee et al., US 4,316,914, Feb. 23, 1982.
[4] Velcon, *Centistokes to Saybolt Universal Seconds Conversion*, 2003.

"adapted to act non-systemically relative to a host animal" and (b) the recitation in claim 12 of "a non-systemically operating" pesticide?

Findings of Fact

1. The Specification relates to a method and mixture for protecting animals against pests (Spec. 1).

2. The Specification discloses that a drawback of some of the prior art is that they "operate systemically, thus potentially adversely affecting the quality of any derived human or pet food product" (*id.* at 3).

3. The Specification also discloses that the mixture of the present invention "does not operate systemically" (*id.* at 4-5).

4. In particular, the Specification discloses:

> [T]he mixture ensures that the carrier, and hence the active ingredient blended therein, essentially lay on top of an animal's coat of hair, thereby making the active ingredient easily transmissible to flies, lice, other parasites or insects, arachnids, and/or other arthropods, and ectoparasites and in general, viruses, bacteria and/or other microorganisms when they land or are deposited on the animal. . . . . [S]ince the active ingredient to a large extent resides on top of the hair rather than below the hair and on the skin of the animal, i.e. *does not operate systemically*, the potential for transdermal absorption of the active ingredients into the body of the animal is minimized. This in turn minimizes or prevents contamination of the human food chain or other animals' food chain for which the treated animal's products may be intended.

(*Id.* at 6 (emphasis added.)

5. Claim 1, as originally filed, recites a mixture comprising "at least one pesticide with [a] carrier or combination of carriers, wherein said pesticide acts non-systemically relative to a host animal" (*id.* at 12).

6. Claim 12, as originally filed, recites "mixing at least one of a non-systemically operating insecticide, ectoparasitide, viricide, insect or other arthropod growth regulator (IGR), bacteriacide, and bacteriostatic compound with [a] carrier to provide a mixture" (*id.* at 13).

Principles of Law

"It is axiomatic that, in proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation consistent with the specification." *In re Sneed*, 710 F.2d 1544, 1548 (Fed. Cir. 1983). "[T]erms [that] merely set forth the intended use for, or a property inherent in, an otherwise old composition . . . do not differentiate the claimed composition from those known to the prior art." *In re Pearson*, 494 F.2d 1399, 1403 (CCPA 1974).

Compliance with the written description requirement is determined by whether the disclosure shows possession of the claimed invention to a person of ordinary skill in the art. *Union Oil Co. of California v. Atlantic Richfield Co.*, 208 F.3d 989, 997 (Fed. Cir. 2000). This requirement "is separate and distinct from the enablement requirement." *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563 (Fed. Cir. 1991).

"In order to satisfy the written description requirement, the disclosure as originally filed does not have to provide *in haec verba* support for the claimed subject matter at issue." *Purdue Pharma L.P. v. Faulding, Inc.*, 230 F.3d 1320, 1323 (Fed. Cir. 2000). In addition, original claims may constitute their own description. *In re Koller*, 613 F.2d 819, 823 (CCPA 1980).

The Examiner "bears the initial burden . . . of presenting a *prima facie* case of unpatentability." *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

> Insofar as the written description requirement is concerned, that burden is discharged by "presenting evidence or reasons why persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claims." . . . If . . . the specification contains a description of the claimed invention, albeit not *in ipsis verbis* (in the identical words), then the examiner . . . , in order to meet the burden of proof, must provide reasons why one of ordinary skill in the art would not consider the description sufficient.

In re Alton, 76 F.3d 1168, 1175 (Fed. Cir. 1996) (quoting *In re Wertheim*, 541 F.2d 257, 263 (CCPA 1976)).

Analysis

The Specification contains words describing pesticides acting or operating non-systemically relative to a host animal (Findings of Fact (FF) 3-6). The Examiner has not provided adequate "reasons why one of ordinary skill in the art would not consider [this] description sufficient" to describe a pesticide that acts or operates non-systemically relative to a host animal. *In re Alton*, *supra*.

With respect to the phrase "adapted to," we agree with the Examiner that the Specification does not describe modifying a pesticide itself, so that it acts non-systemically rather than systemically (Ans. 6). Instead, the Specification describes achieving non-systemic action relative to the host by incorporating the pesticide in a carrier that "essentially lay[s] on top of an animal's coat of hair," minimizing "the potential for transdermal absorption of the active ingredients into the body of the animal" (FF 4). Therefore, we

interpret the phrase "is adapted to act" to mean that, when combined with the carrier, the pesticide that has the ability to act non-systemically relative to a host animal. The Specification discloses a pesticide having the ability to act non-systemically relative to a host animal when combined with a carrier (FF 4). Thus, we do not find that changing "acts" to "is adapted to act" created a written description issue.

Conclusion

The Examiner has not shown that the Specification fails to provide written description adequate to support: (a) the recitation in claim 1 of a pesticide "adapted to act non-systemically relative to a host animal" and (b) the recitation in claim 12 of "a non-systemically operating" pesticide. We therefore reverse the written description rejection of claims 1, 2, 4-14, and 16-21.

II

The Examiner rejects claims 1, 2, 4, 5, and 9 as anticipated by Waldstein (Ans. 8). The Examiner relies on Waldstein for disclosing the claimed mixture (*id.* at 8-9). The Examiner finds that "[t]here is nothing to preclude animal use, & if so applied, the . . . pesticide [would] inherently be no[n]-systemic" (*id.*). The Examiner also finds that "[s]urfactants are common, but not required" (*id.* at 9). In particular, the Examiner finds that "Example 1[] is a mineral oil mix of 160 SUS, . . . meeting instant claim 9. There is no surfactant (thus meeting claim 2)." (*Id.*)

Appellants argue that Waldstein "provides absolutely no teaching or suggestion for a pesticide, and in particular a pesticide that is 'adapted to act non-systemically relative to a host animal'" (App. Br. 11). Appellants also

argue that "the rust inhibitor of Waldstein is adapted to be applied to a ferrous rustable surface, and not to an animal" (*id.*).

With regard to claim 2, Appellants additionally argue that "[t]here is no teaching or suggestion in Waldstein of a mixture for application on an animal to provide barrier protection against pests, wherein the mixture contains essentially no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension" (*id.* at 12).

With regard to claim 9, Appellants additionally argue that "[t]here is no teaching or suggestion in Waldstein of a mixture for application on an animal, to provide barrier protection against pests, wherein the viscosity is greater than 120 S.U.S." (*id.*).

Issues

Does the evidence support the Examiner's conclusion that Waldstein discloses a mixture comprising a pesticide that is adapted to act non-systemically relative to a host animal?

Does the evidence support the Examiner's conclusion that Waldstein discloses a mixture that contains essentially no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension?

Does the evidence support the Examiner's conclusion that Waldstein discloses a carrier or combination of carriers that has a viscosity greater than 120 SUS?

Findings of Fact

7. The Specification discloses that the term "pesticide" encompasses "an insecticide, ectoparasitide, insect or other arthropod

growth regulator (IGR), viricide, bacteriacide, and/or bacteriostatic compound" (Spec. 4).

8. Waldstein discloses monalkanolamide borates that, "in addition to a primary rust-inhibiting function, . . . are effective bactericides and fungicides" (Waldstein, col. 1, ll. 61-67).

9. Waldstein also discloses that the "compounds are added to carriers to form compositions that are to be applied to surfaces. . . . The compositions can be used anywhere that they will be applied to ferrous rustable surfaces, e.g. the compounds in combination with cutting oils. . . ." (*Id.* at col. 2, ll. 45-58.)

10. In particular, Waldstein discloses oil "having an SUS at 100° F. between 70 and 800" (*id.* at col. 5, ll. 12-13).

11. Waldstein also discloses that "[i]t is customary to have present . . . other addenda such as surfactants. . . ." (*id.* at col. 5, ll. 23-27).

12. In addition, Waldstein discloses "examples of anhydrous hydraulic fluids to which the alkanolamide borates of the instant invention are added" (*id.* at col. 6, ll. 46-48).

13. In particular, Waldstein Example 1 discloses a mineral oil base having an SUS of 160 at 100°F (*id.* at col. 6, ll. 49-56).

Principles of Law

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

> Where a patentee uses the claim preamble to recite structural limitations of his claimed invention, the PTO and

> courts give effect to that usage. Conversely, where a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention, the preamble is not a claim limitation.

Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997).

Analysis

As discussed above, we interpret claim 1 to require a mixture comprising a pesticide that has the ability to act non-systemically relative to a host animal when combined with a carrier. Waldstein discloses a mixture comprising a pesticide and a carrier (FF 8-9; *see also* FF 7). Appellants argue:

> Th[e] ability of the pesticide to act non-systemically relative to the host animal is brought about by the claimed viscosity of the carrier or combination of carriers, as a result of which the pesticide essentially does not reach the skin, i.e. resides on top of the animal's hair rather than below the hair and on the skin of the animal.

(App. Br. 10.) Waldstein discloses a carrier having a viscosity in the range recited in claim 1 (FF 10 & 13). Thus, the Examiner's conclusion that Waldstein discloses a mixture comprising a pesticide that is adapted to act non-systemically relative to a host animal is supported by the evidence.

We recognize that Waldstein discloses applying its composition to ferrous rustable surfaces rather than an animal (FF 9). However, we agree with the Examiner that the preamble of claim 1 merely recites the intended use of the mixture and therefore does not differentiate the mixture of claim 1 from Waldstein's composition (Ans. 8 & 11) because it does not add any additional features or characteristics to the claimed mixture.

With regard to claim 2, Waldstein discloses that "[i]t is customary to have present . . . other addenda such as surfactants" (FF 11). However, we agree with the Examiner that Waldstein does not require including surfactants and, in Example 1, discloses a composition that does not include surfactant, emulsifier, or emulsifying agent (Ans. 9; FF 12-13).

With regard to claim 9, Waldstein discloses a carrier having a viscosity greater than 120 SUS (FF 12-13).

Conclusion

The evidence supports the Examiner's conclusion that Waldstein discloses a mixture comprising a pesticide that is adapted to act non-systemically relative to a host animal. We therefore affirm the anticipation rejection of claim 1 in view of Waldstein. Claims 4 and 5 have not been argued separately and therefore fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii).

The evidence also supports the Examiner's conclusion that Waldstein discloses a mixture that contains essentially no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension. We therefore affirm the anticipation rejection of claim 2 in view of Waldstein.

In addition, the evidence supports the Examiner's conclusion that Waldstein discloses a carrier or combination of carriers that has a viscosity greater than 120 SUS. We therefore affirm the anticipation rejection of claim 9 in view of Waldstein.

III

The Examiner rejects claims 1, 2, 4, 5, 7, and 8 as anticipated by or obvious over Mallis (Ans. 9). The Examiner relies on Mallis for disclosing

"that it is common practice to employ as insecticides petroleum hydrocarbon oils alone or in combination with auxiliary chemical toxicants" (*id.*). The Examiner finds that claim 1 is "met by Example V-oil carrier of 103 SUS . . . mixed with pesticidal dimethylsilicone" (*id.*). The Examiner also finds that "there is no surfactant" (*id.*).

Appellants argue:

> [T]he V-oil carrier cited by the Examiner is for cockroaches, which are not found on animals. Furthermore, the viscosity indicated for the only livestock application given by Mallis (see column 3, line 32), namely 43.2 S.U.S., actually teaches away from appellants' required viscosity of 100 to 1200 S.U.S. in that it is far lower than appellants' required viscosity range.

(App. Br. 14.)

With regard to claim 2, Appellants additionally argue that "[t]here is no teaching or suggestion in Mallis of a mixture for application on an animal to provide barrier protection against pests, wherein the mixture contains essentially no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension" (*id.* at 15).

Issues

Does claim 1 encompass an insecticide that provides protection against cockroaches?

Does Mallis teach away from a carrier or combination or carriers having an absolute or resultant viscosity of from 100 to 1200 SUS?

Does the evidence support the Examiner's conclusion that Mallis discloses a mixture that contains essentially no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension?

Findings of Fact

14. Mallis discloses that "[i]t is common practice to employ as insecticides various petroleum hydrocarbon oils alone or in combination with auxiliary chemical toxicants" (Mallis, col. 1, ll. 14-16).

15. Mallis also discloses that "the effectiveness of insecticidal compositions containing a hydrocarbon oil . . . can be substantially increased by the incorporation therein of . . . a liquid condensation product of an organo-silicon oxide compound" (*id.* at col. 1, ll. 57-64).

16. In addition, Mallis discloses that, in some "oil sprays, for example livestock sprays and agricultural sprays, heavier petroleum fractions such as lubricating oil distillates having . . . a viscosity of 43.2 SUS at 100° F. can be satisfactorily employed" (*id.* at col. 3, ll. 28-33).

17. In Example V, Mallis discloses "incorporating varying amounts of a liquid organo-silicon oxide condensation product (dimethyl silicone . . .) in a petroleum hydrocarbon oil having . . . a viscosity of 103 SUS at 100° F. The resulting compositions were tested as insecticides against German male cockroaches." (*Id.* at col. 6, ll. 1-26.)

Principles of Law

> A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. The degree of teaching away will of course depend on the particular facts; in general, a reference will teach away if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant.

In re Gurley, 27 F.3d 551, 553 (Fed. Cir. 1994). "A reference is no less anticipatory if, after disclosing the invention, the reference then disparages it. Thus, the question whether a reference 'teaches away' from the invention is inapplicable to an anticipation analysis." *Celeritas Techs. Ltd. v. Rockwell Int'l Corp.*, 150 F.3d 1354, 1361 (Fed. Cir. 1998).

Analysis

The Specification states that the term "pesticide" encompasses an insecticide (FF 7). A cockroach is an insect (*see* FF 17) and therefore an insecticide against a cockroach is within the scope of claim 1's pesticide.

With regard to the argument that Mallis teaches away from the claimed viscosity, Mallis does discloses oil sprays for livestock having a viscosity of 43.2 SUS at 100° F (FF 16). However, not only is the recitation in claim 1 of "for application on an animal" an intended use that does not differentiate the claimed product from Mallis, we do not agree that Mallis teaches away from using oil carriers having a viscosity other than 43.2 SUS for livestock. Moreover, Appellants have not shown why Mallis Example V fails to anticipate claim 1, thus rendering a "teaching away" argument inapplicable.

With regard to claim 2, Appellants have not adequately explained why the Examiner is incorrect in his finding that Mallis discloses compositions having no surfactant, emulsifier, or emulsifying agent (Ans. 9).

Conclusion

Claim 1 encompasses an insecticide that provides protection against cockroaches. In addition, Appellants have not shown that Mallis teaches away from a carrier or combination or carriers having an absolute or

resultant viscosity of from 100 to 1200 SUS. We therefore affirm the anticipation or obviousness rejection of claim 1 in view of Mallis. Claims 4, 5, 7, and 8 have not been argued separately and therefore fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii).

The evidence also supports the Examiner's conclusion that Mallis discloses a mixture that contains essentially no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension. We therefore affirm the anticipation or obviousness rejection of claim 2 in view of Mallis.

IV

The Examiner rejects claims 1, 2, 5, 7-9, and 11 as anticipated by or obvious over Coffee as explained by Velcon (Ans. 9). The Examiner relies on Coffee for disclosing "Permethrin as an inert pesticide in a carrier in solution without a surfactant having a resultant viscosity of 1-50 centistokes" (*id.* at 10). The Examiner finds that "50 centistokes is shown by VELCON to equate to 230 SUS, thus meeting claim 9 requiring greater than 120 S.U.S." (*id.*). The Examiner also finds that "Example 1 provides 100 SUS (21.2 centistokes)" and that "Example 8 with a volatile compound-aromasol -(as in instant claim 11), and Example 9[] have viscosities of 230 SUS and 190 SUS respectively (50 and 43 centistokes)" (*id.*).

Appellants argue that "Coffee in no way teaches or suggests appellants' mixture for application on an animal, to provide barrier protection against pests" (App. Br. 16).

With regard to claim 2, Appellants argue that "[t]here is no teaching or suggestion in Coffee of a mixture for application on an animal to provide barrier protection against pests, wherein the mixture contains essentially no

surfactant, emulsifier, or emulsifying agent, either in solution or in suspension" (*id.* at 17).

With regard to claim 9, Appellants argue that "[t]here is no teaching or suggestion in Coffee of a mixture for application on an animal, to provide barrier protection against pests, wherein the viscosity is greater than 120 S.U.S." (*id.*).

Appellants additionally argue that "[t]here is no teaching or suggestion in Coffee for a mixture for application on an animal, to provide barrier protection against pests, wherein the mixture includes the volatile compound required by claim 11" (*id.* at 18).

Issues

Does the preamble of claim 1 differentiate the mixture of claim 1 from Coffee's composition?

Does the evidence support the Examiner's conclusion that Coffee discloses a mixture that contains essentially no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension?

Does the evidence support the Examiner's conclusion that Coffee discloses a carrier or combination of carriers that has a viscosity greater than 120 SUS?

Does the evidence support the Examiner's conclusion that Coffee discloses a mixture comprising a volatile compound according to claim 11?

Findings of Fact

18. Velcon depicts a table showing how to convert centistokes to Saybolt Universal Seconds (SUS). As an example, Velcon states that a "viscosity of 30 centistokes is equivalent to 140 Saybolt Universal Seconds."

19. Coffee discloses "an electrostatically sprayable insecticidal formulation comprising a solution of from 0.5 to 50% of permethrin and like compounds . . . in an organic solvent medium, the formulation having . . . a viscosity at 20° C. of 1 to 50 centistokes," which overlaps with the viscosity range recited in claim 1 (Coffee, col. 2, ll. 27-34, & Velcon).

20. In Example 8, Coffee discloses a composition containing, among other components, cypermethrin, 'Aromasol' H, and cottonseed oil, the composition having a viscosity of 50 centistokes (Coffee, col. 6, ll. 1-14, & col. 5, ll. 27-29).

21. A viscosity of 50 centistokes is between 200 and 300 SUS (Velcon).

Analysis

As indicated above, we agree with the Examiner that the preamble of claim 1 merely recites the intended use of the mixture without imparting any additional structural or other features. Therefore, the preamble does not differentiate the mixture of claim 1 from Coffee's composition (Ans. 10 & 12).

With regard to claim 2, Appellants have not adequately explained why the Examiner is incorrect in his finding that Coffee discloses compositions having no surfactant, emulsifier, or emulsifying agent (Ans. 10).

With regard to claim 9, Coffee discloses a carrier or combination of carriers that has a viscosity greater than 120 SUS (FF 20-21).

With regard to claim 11, the Examiner finds that 'Aromasol' H is a volatile compound, as required by claim 11 (Ans. 10). Appellants have not adequately explained why this finding is incorrect.

Conclusion

The preamble of claim 1 does not differentiate the mixture of claim 1 from Coffee's composition. We therefore affirm the anticipation or obviousness rejection of claim 1 in view of Coffee as explained by Velcon. Claims 5, 7, and 8 have not been argued separately and therefore fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii).

In addition, the evidence supports the Examiner's conclusion that Coffee discloses a mixture that contains essentially no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension. We therefore affirm the anticipation or obviousness rejection of claim 2 in view of Coffee as explained by Velcon.

The evidence also supports the Examiner's conclusion that Coffee discloses a carrier or combination of carriers that has a viscosity greater than 120 SUS. We therefore affirm the anticipation or obviousness rejection of claim 9 in view of Coffee as explained by Velcon.

In addition, the evidence supports the Examiner's conclusion that Coffee discloses a mixture comprising a volatile compound according to claim 11. We therefore affirm the anticipation or obviousness rejection of claim 11 in view of Coffee as explained by Velcon.

SUMMARY

We affirm the anticipation and/or obviousness rejections of claims 1, 2, 4, 5, 7-9, and 11. However, we reverse the written description rejection. Thus, claims 6, 10, 12-14, and 16-21 are not currently subject to a rejection.

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED-IN-PART

dm

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